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FAIR TRADE: FIVE DEALS TO EXPAND AND IMPROVE CHARTER SCHOOLING

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Public charter schooling has expanded relatively quickly since 1992, when the nation's first public charter school opened in St. Paul, Minn. In just 15 years there are now more than 4,000 of these independent public schools operating, and 40 states and the District of Columbia have laws allowing public charter schools to open. More than 1.1 million students now attend charter schools.[1]

Charter schools have achieved a substantial market share in some communities. For instance, more than one in four public school students in Washington, D.C., attends a charter school and one in five in communities like Detroit and Kansas City, Mo.[2] Yet, overall, the number of students in charter schools, as well as the number of charter schools, pales in comparison to the overall public school marketplace with more than 100,000 schools and nearly 50 million students.

In communities where charters have been poised to grow substantially, political resistance to them has often become intense. In Washington State, for instance, the teachers unions led an effort to overturn that state's nascent charter school law. In Ohio, several lawsuits have targeted charter schools and even sought, unsuccessfully, to have them declared unconstitutional under that state's constitution. And, in many states, caps on charter schools are staunchly supported by vested education interests.[3]

But the political back and forth belies a more fundamental shift that is under way: School choice is here to stay, and its expansion is much more a question of when and under what terms greater choice will come to education than if it will come at all. Americans desire choices, and, so far, when choices have been offered in education, parents have flocked to them—even when the choice is a school of lower quality than the one they are leaving.[4]

To date, despite the challenges they have faced in some states, charter schools seem to provide the best model for marrying substantially expanded choice within public education with public oversight and accountability.[5] The evidence on charter school performance is far from definitive, but the success of some charter schools offers reason for cautious optimism about this reform strategy, as well as clear steps reformers must take to improve charter schooling.[6]

The most effective choice policies seem to be those that are deliberately designed to maximize the benefit for students and ameliorate some of the problems inherent in any market-oriented system. Policymakers can help pave the way for choice initiatives that genuinely benefit students by deliberately trying to expand the charter school sector while also addressing problems of quality and scale. Yet accomplishing this means striking deals among various educational constituencies, some of whom are powerful and oppose expanding public charter schooling.

Of course, deals are nothing new in politics. All policymaking is at some level political and involves deals of various kinds. Charter schools are hardly an exception, and they often benefit from explicitly political deals. In New York, for example, when the state's charter law was first enacted, passage was tied to a pay raise for legislators. While such deals are effective, more constructive deals would tie the expansion of charter schooling to more education specific goals and strategies that improve and modernize the public school system overall.

This policy brief offers five deals to expand (and hopefully improve) charter schooling. They are deals that benefit both charter schools and constituencies that feel threatened by charter school expansion. The five deals are trading charter school caps for the more rapid expansion of proven models, trading high test scores for space for charter schools to operate, linking transition aid to real estate, joining the effort to improve school finance with an expansion of charter schooling, and unionizing some charter schools with teachers' contracts that reflect the values of charter schooling.

These deals are hardly the only bargains that local or state policymakers could strike around these issues, but they are all attainable today. Moreover, they could especially help disadvantaged or at-risk populations, since schools

that serve such populations can be prioritized in these policies. While overall charter schools are more likely to focus on serving disadvantaged students than other public schools, continuing to ensure that school improvement efforts are directed toward these students must remain a top priority for policymakers.

1. Uncapping Quality

In many states there is a stalemate over charter school caps. Charter proponents want no caps on the number of charter schools that can open and operate, while opponents want strict caps and as few charter schools as possible. But, as argued in a recent Education Sector analysis, charter caps are a blunt instrument that prevents good schools as well as bad ones from opening.[7]

Embedded in the back and forth about charter school caps are the seeds of a compromise. Rather than debate whether or not to have caps, policymakers can implement quality-sensitive or "smart" caps. This approach allows high-quality schools to replicate to meet demand, while encouraging states to focus on careful authorizing of new and unproven schools.

Smart caps would allow schools that have met a performance threshold to replicate as fast as they are able to. The performance threshold could be, for instance, schools that perform in the top quartile of all schools or the top 10 percent or 15 percent of similar schools. In other words, there would be no caps on established proven models. At the same time, states would provide financial assistance to these schools to help them expand. Meanwhile, there would be an annualized cap on new schools based on the capacity of charter school authorizers within a state to evaluate and oversee them.

Under smart caps, charter opponents do not get the outright ban on charters that they seek, and proponents do not get the unfettered growth of charter schools that many want. Yet both sides get a policy that helps achieve their avowed goals. Both charter opponents and supporters claim to be concerned about quality, and this policy is keenly linked to school quality. The best charter schools, which by definition would be among the best public schools in any state, get a leg up on expansion. And state policymakers get a charter growth policy with a strong quality component.

2. Test Scores for Space

Public schools and school districts are under more pressure than ever before. The federal No Child Left Behind Act (NCLB) and state accountability systems demand that schools improve student achievement or face consequences. Although the pressure to improve affects all schools, high-performing charter schools looking for space to expand have something to bargain with: their students' high test scores.

Space suitable for educational use is sometimes difficult to find. And many charters are caught in a strange paradox: Some of the nation's worst urban school systems are nonetheless located in costly real estate markets. Washington, D.C., is a classic example. Here, one of the nation's most beleaguered school systems is nestled in one of its priciest real estate markets. But high-performing charter schools can use their test scores as a non-monetary incentive to get traditional public schools and school districts to enter into a partnership.

In Ohio, for example, state law encourages such partnerships:

> Any district that leases a building to a community school located in the district or that enters into an agreement with a community school located in the district whereby the district and the school endorse each other's programs may elect to have data regarding the academic performance of students enrolled in the community school combined with comparable data from the schools of the district for the purpose of calculating the performance of the district as a whole on the district report card. Any district that so elects shall annually file a copy of the lease or agreement with the department.[8]

In practice, by partnering, the high test scores generated by good charter schools would boost the overall performance of other schools for state and federal accountability requirements. The charter gets space to operate and serve students, and the host school gets the credit as a matter of policy.

There are several risks to this deal. In states that evaluate students based on overall pass rates a partnership like this could mask low-performance by other students.

NCLB, which focuses on transparency about student achievement, closing the achievement gaps between different demographics, and utilizing a rising floor for student performance, helps guard against this problem. Yet policymakers must be especially attentive to data about student achievement to ensure that this deal does not obscure the complete picture around school performance in any building.

For charter schools, there is a risk to their autonomy. Under such a transaction, the school's facility could be subject to politics within the district. Many school districts are hostile to charter school competition, and a school board election can change a district's posture toward charter schools almost overnight. In extreme cases a school could lose its facility because of political shifts. In addition, at the school level, charters must ensure that their operating autonomy, in other words their ability to manage key decisions about operations and personnel at the school site, is protected in any deal. This is especially important if the charter school will be treated as a program at a school rather than a separate school for the purposes of this arrangement.

3. Transition Aid for Facilities

When choice schemes are initiated public school districts often complain that although they might lose just a percentage of students, they can't cut just a percent of many fixed costs. Though a school or school district might only lose 15 percent of its students, it can't cut its energy bill by 15 percent or have 15 percent less custodial or cafeteria staff. Although the impact of losing some students can be overstated, this is not a completely illegitimate concern, especially in the very short term.[9]

To help address the financial impact that districts can experience from a rapid loss of students to public charter schools, some states have put in place transitional aid for school districts. For instance, as researchers Matthew Arkin and Bryan C. Hassel report, Illinois, Washington, D.C., and New York are among those states and districts with such policies:

> In Illinois … the state provides Transition Impact Aid to districts covering 90 percent of charter funding during the first year of its initial charter term, 65 percent in the second year, and 35 percent in the third year (although funding levels for this aid varies from year to year). In Washington, D.C., the district receives per-pupil funding for the prior year's enrollment number—effectively providing transition aid equaling 100 percent of charter funding for the first year that a charter is open. In New York, the state will provide transition aid to districts equal to 80 percent of the charter payments for students who move to charters beginning in the 2007-08 school year, phased down to 60, 40, and 0 percent in the subsequent three years.[10]

Traditionally, charter advocates have willingly agreed to transition aid as a way to ease passage of legislation that supports charter schooling. And why not? Charter advocates are happy to take almost any deal if it means an expansion of charter schooling regardless of the fiscal cost to taxpayers or whether it's in the public interest. School districts, of course, are happy to have the money.

Yet, while just handing out money for transition aid might make sense as a political strategy, substantively it leaves a lot be desired as a public policy. That's because, at the same time school districts are receiving money for losing students, charter schools are often struggling to find adequate space to educate those students. In Washington, D.C., for example, the school district has a surplus space and buildings, while nonprofit organizations scramble to help charter schools find adequate space to educate children.[11]

School districts should receive temporary transition aid to help them adjust to losing students, but that funding should be linked to giving charter schools access to unused space. Different school configurations, consolidations, or shared space are all strategies districts could be required to use in exchange for receiving the transition aid they desperately want. If taxpayers are expected to help school districts pay for students they no longer educate, it's not unreasonable to expect those districts to modify their practices and accommodate new providers of public education.

4. More Equitable Funding … And More Charters

Disparities in education funding are a long-standing feature of the American education landscape. Despite

a substantial increase in federal funding to help disadvantaged students and dozens of lawsuits since 1973, when the Supreme Court ruled that school finance was a state rather than federal issue, poor and minority students remain on the wrong end of systemic spending disparities.[12]

Today, in addition to wrestling with how much to spend on schools, states are also beginning to discuss the equally important question of how to spend that money. There is a growing consensus that the prevailing methods, mostly categorical programs that fund schools, have significant disincentives and hamper promising reform initiatives. In 2006, a bipartisan group of policy leaders, including former Clinton White House Chief of Staff John Podesta and former Bush administration Secretary of Education Rod Paige endorsed the idea of "weighted student funding" or WSF.[13]

WSF initiatives essentially attach funding to students, weighted for various educational needs, such as special education, poverty, or English-language learning. The idea is beginning to gain traction in states like New York and New Jersey and major school districts like New York City, the nation's largest.

WSF would be a boon for choice-based reforms for several reasons. Funding students instead of schools would make parents more empowered consumers in the public education marketplace. At the same time, shifting control of a key education spending decision from school districts and schools to parents would help address the political dynamic that today leads to less funding for public charter schools than other public schools. On-average charters receive 22 percent less funding than other public schools, according to a 2005 Fordham Foundation study.[14]

But WSF is not a one-sided deal. WSF will only work insofar as the underlying funding amounts are sufficient. This presents an opportunity for charter school advocates to join forces with traditional school districts to ensure that there is sufficient funding for all public schools. Approaching legislators (and the courts) with reform-oriented remedies like charter schooling as well as requests for more money is a more promising strategy for those seeking to increase funding for schools. If the end result is a more equitable funding model, a modernized way of financing schools through WSF, and more charter schools, that's a good deal for all parties—especially disadvantaged students.

5. Unionization for Reform Contracts

Charter schools and teachers unions eye each other warily. Teachers union leaders are understandably concerned that a relatively fast-growing segment of the education market place is non-unionized. And most charter school leaders are understandably concerned that a traditional teachers union contract could hinder their school's ability to have control over the key decisions they believe make their schools effective.[15]

The problem is not, as some union leaders claim, that the majority of people involved in charter schools are anti-union.[16] In fact, most can probably be described as ambivalent on larger questions about the role of organized labor and primarily concerned with what conditions lead to effective schools. Nor is the problem that teachers' contracts are inherently incompatible with charter schooling. High-profile charter schools like Green Dot Public Schools, which employ unionized teachers, show that effective charters can operate in tandem with teachers unions, and there are Knowledge Is Power Program schools and other schools operating under modified teachers union contracts. Meanwhile, the United Federation of Teachers in New York City, the nation's largest teachers union affiliate is operating two charter schools there.

Rather, there is simply a lack of trust on both sides and too few examples of successful partnerships to date. Early teachers union forays into charter schools generally faltered, and there is too little other evidence.[17] Meanwhile, the highest performing charter schools see a host of challenges in front of them but little that teachers unions or a contract can do to resolve them.

Still, public education overall is a heavily unionized field. About 80 percent of the nation's 3 million public school teachers belong to teachers unions and many states have laws that effectively require membership from all public school teachers.[18] As a result, teachers unions are the most powerful education interest group at the state and national level. In other words, for charter schools to expand substantially, either the political landscape will

have to change a great deal, or they will have to make some accommodations with teachers union leaders. Of course, just as every charter school need not be unionized to be successful, every charter school does not need to be non-unionized to be successful either. There is plenty of room for innovation and middle ground.

One characteristic shared by all the successful charter-union partnerships to date is that they use some version of a modified contract that offers flexibility in key areas, especially around staffing decisions. This indicates the seed of a strategy to bridge the charter school-teachers union divide: "thin," "reform," or more flexible contracts for charter school teachers.

In general, these contracts offer more flexibility around hiring and dismissal and leave more decision-making to the school level. A core principle of these contracts is that no school has to hire someone the school's leadership does not want teaching in that school. The contracts also include a more streamlined due-process system for removing consistently low-performing teachers from the classroom rather than the cumbersome process that is commonplace today in most school districts.

It's worth noting that the Green Dot teachers' contract has never been tested in terms of management wanting to remove a teacher who simply did not want to go. This may be in large part because of the environment at the school: It's not a place low-performers want to be or can hide. Nonetheless, the contract is one promising model. Pragmatism and the evidence to date indicate that charter school leaders could accelerate the expansion of high-quality charter schools through partnerships with progressive teachers union leaders. Every charter school need not be a union shop, and no charter should enter into an agreement that thwarts its effectiveness and educational goals. But between those standards and the status quo today, there is plenty of room to innovate with different kinds of teachers' contracts.

Win-Wins

Charter schools offer a promising way to expand high-quality public educational options for all students, especially our most disadvantaged. But the expansion of charter schools is often hamstrung by political opposition as well as substantive challenges. Yet there are some bargains that can be struck that help address challenges created by charter schools while also helping charters expand. The five ideas highlighted in this policy brief are win-wins for charter schools as well as established interests leery of their expansion.

Of course, some charter school opponents will consider any deal that leads to any expansion of charter schooling to be a bad one. But this shortsighted approach ignores the broader trajectory of choice in American education as well as the potential of choice to help improve outcomes for students. Instead, through some fair trades, the legitimate concerns of critics can be addressed while high-quality charter schools can expand and serve more students.

Endnotes

[1] National Alliance for Public Charter Schools, available online at http://www.publiccharters.org/content/publication/detail/2182/.

[2] Todd Ziebarth, *Top 10 Charter Communities by Market Share*, 2nd ed., (Washington, DC: National Alliance for Public Charter Schools, October 2007).

[3] See, for instance, Andrew J. Rotherham, *Smart Charter School Caps* (Washington, DC: Education Sector, September 2007); see also, Lisa Stulberg, *Beyond the Battle Lines: Lessons from New York's Charter Caps Fight* (Seattle, WA: National Charter School Research Project, University of Washington, 2007).

[4] The charter school experience in Ohio is illustrative here. Even charter schools that are failing under state and federal performance measures often have long waiting lists.

[5] Sara Mead and Andrew J. Rotherham, *A Sum Greater Than the Parts: What States Can Teach Each Other About Charter Schooling* (Washington, DC: Education Sector, 2007); see also Andrew J. Rotherham, *Putting Vouchers in Perspective* (Washington, DC: Progressive Policy Institute, 2002).

[6] Sara Mead and Andrew J. Rotherham, *A Sum Greater Than the Parts: What States Can Teach Each Other About Charter Schooling*. For an overview of the research on performance, see *Charter School Achievement: What We Know*, 4th ed., (Washington, DC: National Alliance for Public Charter Schools, 2007). The report analyzes the 40 studies of charter schools that have analyzed changes in student performance rather than simply "snapshots" comparing students in different schools at a point in time. Of the 40 studies, 21 find that overall gains in charter schools were larger than other public schools, 10 find charter schools' gains higher in certain significant categories of schools (for instance elementary schools, high schools, or schools serving at-risk students), five find similar gains in charter and traditional public schools, and four find that charter school students made smaller gains than students in other public schools.

[7] Andrew J. Rotherham, *Smart Charter School Caps*; see also Andrew J. Rotherham, "Smart Charter School Caps: A Third Way on Charter School Growth," in *Hopes, Fears, & Reality: A Balanced Look at American Charter Schools in 2007*, ed. Robin J. Lake (Seattle, WA: National Charter School Research Project, 2007).

[8] Ohio Revised Code ORC 3302.03(6)(b).

[9] For a discussion of the financial impact of charter schools, see Matthew Arkin and Bryan C. Hassel, *The Bottom Line: Six Myths About the Financial Impact of Public Charter Schools* (Washington, DC: National Alliance for Public Charter Schools, July 2007).

[10] Matthew Arkin and Bryan C. Hassel, *The Bottom Line: Six Myths About the Financial Impact of Public Charter Schools*.

[11] V. Dion Haynes, "Charters See Opening in Closings," *The Washington Post*, May 19, 2006.

[12] *Funding Gaps 2006* (Washington, DC: The Education Trust, 2006). See also, Martin R. West and Paul Peterson, eds., *School Money Trials* (Washington, DC: Brookings Press, 2007); *Equity and Adequacy in Education Finance* (Washington, DC: National Research Council, 1999).

[13] See Fund the Child Web site, available online at http://www.edexcellence.net/fundthechild/.

[14] Chester E. Finn, Jr., Bryan C. Hassel, Sheree Speakman, et al., *Charter School Funding: Inequity's Next Frontier* (Washington, DC: Thomas B. Fordham Foundation, 2005).

[15] Paul T. Hill, Lydia Rainey, and Andrew J. Rotherham, "A One-Day Ceasefire: What Charter School and Teachers Union Leaders Say When They Meet," in *Hopes, Fears, & Reality: A Balanced Look at American Charter Schools in 2006*, eds. Robin J. Lake and Paul T. Hill (National Charter School Research Project, 2006); see also, Paul T. Hill, Lydia Rainey, and Andrew J. Rotherham, *The Future of Charter Schools and Teachers Unions: Results of a Symposium* (Seattle, WA: National Charter School Research Project, 2006).

[16] See, for instance, Leo Casey, "Three Questions for Eduwonk on Teachers Unions and Charter Schools," Edwize, retrieved November 30, 2007, available online at http://edwize.org/three-questions-for-eduwonk-on-charter-schools-and-teacher-unions.

[17] For instance a National Education Association effort to open and operate six charter schools resulted in only four schools opening, little success, and one high-profile school failure in San Diego.

[18] See Henry S. Farber, "Union Membership in the United States: The Divergence between the Public and Private Sectors," in *Collective Bargaining in Education*, eds. Jane Hannaway and Andrew J. Rotherham (Cambridge, MA: Harvard Education Press, 2006). See also, Terry M. Moe, "Teachers Unions and the Public Schools," in *A Primer on America's Schools*, ed. Terry M. Moe (Palo Alto, CA: Hoover Press, 2001).